A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.1458 of 2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

PETITIONER : 1. Amit Kumar Dwivedi, S/o Sri Ramdhar Dwivedi, Aged 31 years R/o At post - Birkona, Distt. Bilaspur.
2. Ashok Gupta S/o Sri Sharda Prasad Gupta, R/o Seepat Road, Sarkanda, C/o Ghanshyam Sahu, Bilaspur.

Versus

RESPONDENTS : 1. Chief General Manager, Bharat Sanchar Nigam Limited, Chhattisgarh Telecom Circle, Raipur.
: 2. Deputy General Manager (Finance) & Internal Financial Advisor, Bharat Sanchar Nigam Limited Chhattisgarh Telecom Circle, Raipur.
: 3. Bharat Sanchar Nigam Limited Chhattisgarh Telecom Circle Raipur Through :Chief General Manager, Chhattisgarh Telecom Circle, Raipur.

AND

W.P.NO.1771/2005

PETITIONER : Somprakash Giri, S/o Late Shri Surendra Prakash Giri, Aged about 71 years, R/o Village & Post Mahoud, District Dhamtari (C.G.)

Versus

RESPONDENTS : 1. Bharat Sanchar Nigam Limited, (A Govt. of India Enterprises), Registered & Corporate Office 10th Floor, Statesman House, B-148, Barakhamba Road, New Delhi Through its D.D.G. (Marketing)
: 2. Chief General Manager, Bharat Sanchar Nigam Limited, Chhattisgarh Telecom Circle, G.E. Road, Raipur (C.G.)

: 3. General Manager (Marketing), Bharat Sanchar Nigam Limited, Chhattisgarh Telecom Circle, G.E. Road, Raipur (C.G.)

Shri Sameer Sahu, Counsel for the petitioners (W.P.No.1458/2005)

Shri Ashish Shrivastava, Counsel for the petitioner (W.P.No.1771/05)

Shri V.V.S.Murthy, Sr. Counsel with Shri R.M. Solapurkar, Counsel for the B.S.N.L.

ORAL ORDER

(Passed on 16th January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. In these two writ petitions filed as public interest litigation by two persons claiming to be *pro bono* public characters, what is assailed is the action of the Chief General Manager, Bharat Sanchar Nigam Limited (B.S.N.L.), Chhattisgarh Telecom Circle, Raipur, second respondent herein permitting the distribution and allotment of B.S.N.L. SIM cards for cellular mobile telephones to its subscribers within the State of Chhattisgarh by adopting the method called "waiting list draw by computer".

2. In the writ petition, it is contended that the impugned method adopted by the second respondent is quite contrary to the principle of 'first come first served' earlier adopted by the B.S.N.L.

3. In response to the notice issued by this Court, the respondents have filed their return. In the return, while denying all material allegations made in the writ petition, it is stated that the second respondent took the decision to hold a computerized draw for persons in waiting list was taken only after a thoughtful process and after consulting all the S.S.A. heads in Chhattisgarh Telecom Circle in order to maintain transparency and avoid mal-practices. Furthermore, in both the writ petitions, along with the additional affidavit filed by the

respondents, the proceedings of the B.S.N.L. No.27-16/2004-Mktg. dated 8th December 2005 marked as Annexure R/5 is appended to show that the action of the second respondent has been approved and ratified by the B.S.N.L. Annexure R/5 reads as follows:

"Dear Shri Yagya,

Subject: Black marketing of SIM cards.

The issue of SIM cards is being regularly raised by public through media (television, newspapers). Several measures were recommended from this office from time to time to curb possibility of black marketing of SIM cards. But it appears that amount of efforts taken are not sufficient to curb black marketing menace. It is requested that proper steps may be taken to ensure that issue of black marketing is not raised in your circle:-

(i) Waiting list for pre-paid connections is required to be maintained in your circle as mentioned vide letter No.114-8/2005-Comml. Dated 11.08.2005. The waiting list may be maintained on per day basis and the seniority within the day should be maintained with a randomly computerized lottery system. The waiting list so generated may be displayed at public places at regular intervals and may be available with PRO on demand by public.

(ii) The public notice/advertisements may be issued regarding easy availability of SIM cards in both pre-paid and post paid category intimating the name, address of various sales outlets. This advertisement should also have the name and address of the vigilance officer who should be contacted by public any time in case anybody observe in black marketing of SIM cards.

(iii) Any franchisees/sub-franchisees/STD/PCO holder/Post offices found involved in black marketing activities may be suspended from undertaking BSNL activities with immediate effect.

(iv) Vigilance Officer of the circle along with GM (Mktg.) or GM (Mobile) or GM (BD) may conduct on spot inspection at the sales outlet and take immediate action against those who found involved in such black marketing activities. It is also suggested that mobile/marketing units may ensure undertaking survey with existing subscribers and take information

regarding the places from where the SIM cards was issued at what cost, at what firms, information is taken at the time of getting SIM cards.

(v) The prepaid SIM cards should be distributed to franchisees only after verification that earlier lot has been activated.

(vi) Call Centre/Tele-marketing group may be asked to dial the subscribers and confirm the subscriber name and address on random basis. This will avoid re-selling of SIM cards by any consumer.

(vii) Above actions should be taken with earnest sincerity and follow up at all the levels.

With best wishes.

Yours sincerely
Sd/-
(G.S.Grover)

Shri Ram Yagya,
Chief General Manager,
Chhattisgarh Telecom Circle,
Raipur

Endst. No: CMTS/SIM Distribution/05-06/57 Dated at Raipur 22-12-2005

Copy forwarded for information & n/action to:

1. G.M.T.Distt. Raipur / Durg / Bilaspur.
2. T.D.M. Jagdalpur / Raigarh / Ambikapur.
3. D.G.M. (Marketing), o/o CGMT Raipur.

Sd/-
D.G.M.(Mobile)
% C.G.M.Telecom,
CG Circle, Raipur

A careful perusal of Annexure R/5 would show that the impugned method has been adopted by the second respondent in the public interest and to arrest black marketing of SIM cards and to maintain transparency in the matter of allotment of SIM cards. The decision taken by the respondent-authorities in the premise of their experience and with laudable objective of arresting mal-practices and

maintaining transparency could not be faulted with on any permissible grounds of judicial review. On the other hand, we are satisfied that the impugned method adopted by the second respondent as approved and ratified by the B.S.N.L. is intended to sub-serve public interest and maintain transparency in the matter of allotment of SIM cards. In that view of the matter, we dismiss the writ petitions, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge